To: Jones, Bruced[Jones.Bruced@epa.gov]
From: Sweeney, Stephen
Sent: Tue 3/6/2018 8:13:47 PM
Subject: FW: LOOP Permit Congressional call with the Administrator

Bruce,

Does this sound like the full range of legal issues?

On the first one he flags, the CWA says that "discharge of a pollutant" include the addition of a pollutant from a point sources other than "vessel or other floating craft" outside a three mile territorial seas, but the relevant EPA reg at 40 CFR 122.2 (definitions) defining the term continues that the excluded source category is for a "vessel or other floating craft which is being used as a means of transportation." The NPDES exclusion regulation at 40 CFR 122.3 explains "… This exclusion does not apply to rubbish, trash, garbage, or other such materials discharged overboard; nor to other discharges when the vessel is operating in a capacity other than as a means of transportation such as when used as an energy or mining facility, a storage facility or a seafood processing facility, or when secured to a storage facility or a seafood processing facility, or when secured to the bed of the ocean, contiguous zone or waters of the United States for the purpose of mineral or oil exploration or development. Therefore, discharges from an offshore LOOP facility would be discharge of a pollutant requiring an NPDES permit.

Also, the Deepwater Port Act says that, for CWA purposes, a deepwater port is a "new source." The relevance is how CWA section 511(c)(1), which says nothing under the CWA triggers NEPA *except* the issuance of an NPDES permit to a "new source" (and the provision of a federal construction grant for a POTW under CWA section CWA 201 … which is now dead letter law because there are no construction grants under that section anymore). Therefore, NEPA remains triggered to EPA's NPDES permitting action here.

Finally, on the toxicity point Scott makes, the way that would be evaluated under the CWA is via application of the "ocean discharge criteria" under CWA section 403. The way the statute reads, it is a "pass/fail" test. Under the implementing regulations, if EPA is unable to make a determination that there will be "no unreasonable degradation of the marine environment," then the regs allow EPA to issue the permit with monitoring conditions that will enable that determination later (after review of the monitoring results) if EPA makes a determination of "no irreparable harm."

Thanks,

Steve

From: Wilson, Scott
Sent: Tuesday, March 06, 2018 2:45 PM
To: Sweeney, Stephen <Sweeney.Stephen@epa.gov>
Subject: RE: LOOP Permit Congressional call with the Administrator

There are some new twists. Loop is claiming that EPA doesn't have authority to issue the NPDES permit, even though discharges are to Federal waters (greater than 3 miles offshore). They are also claiming that no review is needed under NEPA, ESA, or EFH, which would be true if EPA doesn't have NPDES authority. That could be the reason for saying that EPA doesn't have authority.

The Region believes that NEPA review is needed because only onshore construction activities were addressed in the original 1980s vintage review. I suggest that they include OGC due to several legal issues. LOOP supposedly has also recently added outside counsel in the DC area (Gordon Arbuckle)

The significant water issue appears to be that the discharge is fairly toxic due to the high salinity (318,500 ppm TDS versus seawater which is around 30,000 ppm TDS) and the part of the discharge in state waters is made to waters impaired for aquatic life.

MARAD is renewing the port license and LOOP is asking for a modification to allow export from the facility.

Scott Wilson

Acting Chief

Industrial Permits Branch

USEPA Office of Wastewater Management

1200 Pennsylvania Ave., NW

Washington, DC 20460

202-564-6087

Mail Code: 4203m

From: Sweeney, Stephen
Sent: Tuesday, March 06, 2018 2:30 PM
To: Wilson, Scott <Wilson.Js@epa.gov>
Subject: FW: LOOP Permit Congressional call with the Administrator
Importance: High

I recall that the water "issue" was about whether the application was complete.

Is there more than that?

From: Jones, Bruced
Sent: Tuesday, March 06, 2018 2:27 PM
To: Conrad, Daniel <conrad.daniel@epa.gov>; Sweeney, Stephen <Sweeney.Stephen@epa.gov>
Subject: FW: LOOP Permit Congressional call with the Administrator
Importance: High

Something maybe coming your way. FYI

From: Alvarado, Tina
Sent: Tuesday, March 06, 2018 12:01 PM
To: Jones, Bruced <Jones.Bruced@epa.gov>

Subject: FW: LOOP Permit Congressional call with the Administrator
Importance: High

FYI – this coming from the water side…

From: Dwyer, Stacey
Sent: Tuesday, March 06, 2018 12:00 PM
To: Garcia, David <Garcia.David@epa.gov>; Gray, David <gray.david@epa.gov>
Cc: Hamilton, Denise <Hamilton.Denise@epa.gov>; Lawrence, Rob <Lawrence.Rob@epa.gov>; Payne, James <payne.james@epa.gov>; Alvarado, Tina <Alvarado.Tina@epa.gov>; Harrison, Ben <Harrison.Ben@epa.gov>
Subject: FW: LOOP Permit Congressional call with the Administrator
Importance: High

Please notify Ann immediately.

Stacey

From: Wilson, Scott
Sent: Tuesday, March 06, 2018 11:26 AM
To: Dwyer, Stacey <Dwyer.Stacey@epa.gov>; Larsen, Brent <Larsen.Brent@epa.gov>; Wooster, Richard <Wooster.Richard@epa.gov>
Subject: LOOP Permit Congressional call with the Administrator

We were told that Chairman Graves (LA) is planning to call the administrator regarding some issue with the LOOP permit. Could you let me know what issues he may be raising so I can let management here know?

Scott Wilson

Acting Chief

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